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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,546	05/22/2000	Nathalie Jager Lezer	05725.0588-00000	1552

7590

11/21/2001

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EXAMINER

TRAN, SUSAN T

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 11/21/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

## Advisory Action

Application No.

09/576,546

Applicant(s)

Lezer

Examiner

Susan Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Nov 5, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

4. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
5. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
applicant's amendment has been entered but does not place the case in condition for allowance; see attachment
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: 1-7 and 14-32
9. ☐ The proposed drawing correction filed on \_\_\_\_\_ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
11. ☐ Other: \_\_\_\_\_

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## ATTACHMENT

### *Response to Arguments*

1. Applicant's arguments filed 11/05/01 have been fully considered but they are not persuasive. The examiner maintains the original rejections for the following reasons:

Claims 1, 4-7, 15-18, 20, 23, 24, and 26-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Arraudeau et al. US 4,659,562 ('562).

Applicant argues that Arraudeau does not teach the "compatibilized" fibers according to the clear meaning of the applicant. Contrary to the Applicant's argument, Applicant's specification discloses "*compartilization*" means a total or partial solubilization of fibers in the fatty phase (page 8). Arraudeau teaches fibers in fatty body phase (column 2, lines 40-43). Accordingly, Arraudeau teaches the claimed fibers. Furthermore, Applicant's specification discloses "[compatibilized] fibers are fibers having a length ranging from 1 nm to 20 mm (page 9, liens 19-20). Arraudeau teaches fibers having average length of about 10  $\mu\text{m}$ " (column 1, lines 58-60). Accordingly, Arraudeau does teach Applicant's "compatibilized" fibers.

The applicant argues that Arraudeau fails to disclose a method of improving the staying power over time and/or gloss of an anhydrous care or make-up composition. Contrary to the applicant's argument, Arraudeau teaches an anhydrous make-up composition that do not require consequently new or repeated applications (column 1, lines 33-36), and lipsticks that assure a

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long lasting sharp outline of the lips (column 7, lines 54-56). Thus, Arraudeau does recognize the long lasting properties of a cosmetic composition desired by the applicant.

Claims 1, 4-7, 14-18, 20, 23, 24, and 26-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Franzke et al. US 5,965,146 ('146).

Applicant argues that Franzke does not teach an anhydrous cosmetic composition. The term "anhydrous composition" is defined in applicant's specification at page 5 as being "a composition comprising a homogeneous continuous fatty phase in which may be dispersed ingredients that are insoluble in the fatty phase, in the absence of surfactant or emulsifier, such as dyestuffs and cosmetic or dermatological active agents, including water. In particular, the water will be present in a content of not more than 6% relative to the total weight of the composition". Applicant's specification at page 15, further discloses the composition of the invention can also comprise any ingredients, such as dyestuffs, e.g., pigments; cosmetic or dermatological active agents, such as emollients, moisturizers, e.g., water. Franzke at column 3, lines 52-58 discloses water, wetting agents, or emulsifier agents in an amount of from 0.1 to 30% by weight, which clearly falls within the water content defines in the applicant's specification.

Applicant argues that Franzke does not teaches a cosmetic composition comprises a homogenous continuous fatty phase, but a composition comprises ethanol. Contrary to the applicant's argument, Franzke teaches a cosmetic composition comprising polyamide fiber having diameter of 8 to 70  $\mu\text{m}$ , length between 20 to 2000  $\mu\text{m}$  (column 1, lines 56 through

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column 2, lines 1-67; and example 18), glycols, silicone oil, and polymers (column 3, lines 1-36).

Hence, Franzke does teach an anhydrous cosmetic composition comprising fiber and polyol.

Applicant's generic claims do not exclude the present of alcohols.

Applicant argues that Franzke's examples disclose aqueous or ethanol base composition but not a homogenous continuous fatty phase. Franzke is relied upon for the teaching within the four walls patent. Franzke cannot be limited to his best mode as described in the examples.

Applicant argues that Franzke does not teach the limitations of claims 15-17. However, applicant has not establish the criticality of the particular L/D to provide any unusual and/or unexpected results over the applied prior arts.

Claims 2, 3, 14-22, and 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arraudeau et al. ('562), in view of Bara et al. US 6,177,091 B1 and Arnaud FR 2786393A1 (Abstract).

Applicant argues that Bara does not teach or suggest an anhydrous care or make-up composition comprising fibers, wherein said fibers are compatibilized with a fatty phase by at least one polyol. However, Bara is relied upon solely for the teaching of the parleam oil. Furthermore, Bara does teach a homogeneous and stable anhydrous composition comprising fiber in fatty phase (column 2 and columns 5-6).

Applicant argues that Arnaud does not teach or suggest an anhydrous care or make-up composition comprising fibers, wherein said fibers are compatibilized with a fatty phase by at

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least one polyol. However, Arnaud is relied upon solely for the teaching of the IOB value in an anhydrous cosmetic composition. Thus, it would have been obvious for one of the ordinary skill in the art to modify Arraudeau's cosmetic composition using parleam oil in view of the teaching of Bara, and polyol having IOB value of 1-7 in view of the teaching of Arnaud. The reason for this modification is to obtain a homogeneous anhydrous cosmetic composition that prevents unaesthetic folds or migration of the makeup, and thus, provides long lasting property on skin or lips.

*Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

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